United Nations Convention on the Law of the Sea SPLOS/93

Meeting of States Parties

Distr.: General
27 March 2003

Original: English

Thirteenth Meeting
New York, 9-13 June 2003

Report of the External Auditors for the financial year 2001, with financial statements of the International Tribunal for the Law of the Sea as of 31 December 2001

Introductory note

1. The ninth Meeting of States Parties, as recorded in the report of the ninth Meeting (SPLOS/48, para. 28), requested the Registrar, pending the entry into force of the Financial Regulations of the Tribunal, to present to the Meeting of States Parties every year a preliminary performance report on the use of the budget appropriations for the preceding year and a final performance report on the use of the budget appropriations for the year prior to the preceding year.

2. Consistent with that decision, the report of the External Auditor for 2001, the year prior to the preceding financial year, is hereby presented.

3. The preliminary performance report of the preceding year (2002) is contained in annex I to the draft budget proposals of the Tribunal for 2004 (SPLOS/WP.1).

03-29895

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A. Scope of the Examination

1 We have audited the accompanying financial statements of

The International Tribunal for the Law of the Sea
Hamburg
(hereinafter also referred to as "the Tribunal" or "ITLOS")

including the statement of assets, liabilities, working capital and excess of income over expenditures as of December 31, 2001, the statement of income and expenditures for the period then ended and the Notes to the financial statements. Within the audit scope we have additionally audited certain aspects of operating procedures as directed by the President of the International Tribunal for the Law of the Sea as set out in his letter of 14 March 2002 for the year 2001. The financial statements are the responsibility of the Registry of the Tribunal. Our responsibility is to express an opinion on these financial statements and the following aspects of the operational procedures of the Tribunal:

1 whether expenditures incurred have been appropriately authorized by the party designated for that purpose in the Rule of the Tribunal and the Financial Regulations of the United Nations;

2. whether staff and persons being paid by the Tribunal have been recruited or engaged in the manner provided in the Rules of the Tribunal or the Financial Regulations of the United Nations;

3. whether goods and services have been procured in accordance with the procedures provided for in the Financial Regulations of the United Nations; and

4. whether goods and services which have been procured are necessary or not excessive having regard to circumstances and the functions of the Tribunal.

2. The financial statements as of December 31, 2001, and our audit thereon cover a period from 1 January to 31 December 2001.

3. The International Tribunal for the Law of the Sea applied generally accepted accounting principles and the Financial Regulations and Rules of the United Nations which are applied mutatis mutandis.

4. We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis of our opinion.

5. Reference is made to the General Terms for "Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften" dated January 1, 2002 and our Special Conditions (Exhibit 7), in regard to the assignment and our responsibilities, including those to third parties.

B. Budget

6. The Meeting of State Parties, as its 10th Meeting, by its decision on 24 May 2000 approved and appropriated the amount of USD 8.090.900 for the International Tribunal for the Law of the Sea for the period from January, 1 to December 31, 2001, as set out in document SPLOS/56. In addition, the meeting recalls that the Ninth Meeting of State Parties approved the establishment of a working Capital Fund for the Tribunal and that it provided on an exceptional basis for up to USD 200.000, to be credited to the Fund from savings, from the 2000 appropriations. The Meeting approves an additional amount of USD 50.000 for advances to the Working Capital Fund of the Tribunal in 2001. Moreover, the Meeting decides that, on an exceptional basis, savings from appropriations in the budget for 2001, up to a maximum of USD 200.000, shall also be credited to the Fund. An additional Contingency Fund was approved up to a maximum of USD 863.900, which shall be only used in the event of cases being submitted to the International Tribunal for the Law of the Sea.

7 The statement of income and expenditure (before provision for the Working Capital Fund) shows an excess of income over expenditure of USD 1.483.269. As authorized by the Meeting of States Parties, thereof USD 150.000 was credited to the Working Capital Fund.

8. A shorter meeting time for the Judges of the International Tribunal for the Law of the Sea in Hamburg than provided for in the budget resulted in savings in the budget lines: Contingency Provision (which is a provision made for the Tribunal meeting to deal with cases which it might receive during the year), Travel of judges to sessions, General Temporary Assistance and Communications. Unchanged to the previous year, recruitment delays resulted in savings in the budget lines: Established Posts and Common Staff Costs.

9. Over-expenditure in the budget line Judges Pensions primarily relates to the demise of one member of the Tribunal in 2001, which was partly offset against savings under the compatible budget line Annual Allowances. 2001 was the first full year the new Premises at Hamburg Nienstedten were used by the Tribunal. Expenditures relating to the maintenance of the Premises have been estimated in the prior year mainly on the basis of cost incurred in 2000. However, as 2001 was the first full year of utilization of the premises, the costs proposed in the budget for maintenance proved to be insufficient and led to the over-expenditure in the budget line Maintenance of the Premises. This over-expenditure was, however, offset against savings under the compatible budget line Security and Contractual Services.

C. Audit Opinion

10. In our opinion, the financial statements referred to above present fairly, in all material respects the financial position of the International Tribunal for the Law of the Sea, Hamburg, as of December 31, 2001, in conformity with generally accepted accounting principals and with the Financial Regulations of the United Nations which were applied mutatis mutandis. The operational procedures of the International Tribunal for the Law of the Sea as detailed in Exhibit 6 were in accordance with the Rules and Staff Rules of the International Tribunal for the Law of the Sea and the Financial Regulations and Staff Rules of the United Nations applied mutatis mutandis.

Hamburg, April 4, 2002

PRICEWATERHOUSECOOPERS
GmbH
Wirtschaftsprüfungsgesellschaft

W. Schöppich
Wirtschaftsprüfer

K.V. Rother
Wirtschaftsprüfer

PricewaterhouseCoopers GmbH Wirtschaftsprüfungsgesellschaft
WIRTSCHAFTS-PRÜFUNGS-GESELLSCHAFT
SIEGEL
FRANKFURT AM MAIN
Zweigniederlassung Hamburg

EXHIBIT 1

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

STATEMENT OF INCOME AND EXPENDITURES
FOR THE PERIOD FROM 1 JANUARY UNTIL 31 DECEMBER 2001

	2001 USD	2000 USD
Income		
Assessed contributions	8.090.900	7.657.019
Other Income		
Interest income (net)	146.693	72.928
Savings on cancellation of Prior period Obligations	186.213	139.632
Gain on exchange	32.133	29.157
Total income	8.455.939	7.898.736
Expenditure		
Total expenditure and obligations (EXHIBIT 5)	6.972.670	6.124.760
	6.972.670	6.124.760
Excess of income over expenditures	1.483.269	1.773.976
Provision for Working Capital Fund Reserve	150.000	250.000
Excess (shortfall) of income over expenditure (after provision for the Working Capital Fund Reserve)	1.333.269	1.523.976

EXHIBIT 2

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

STATEMENT OF ASSETS, LIABILITIES, WORKING CAPITAL FUND AND EXCESS OF INCOME OVER EXPENDITURES AS AT 31 DECEMBER 2001

	2001 USD	2000 USD
Assets		
Cash and term deposits	6.849.011	5.158.975
Accounts receivable		
Contributions receivable from States Parties	1.314.164	1.170.891
Tax reimbursements due	178.302	78.606
Accounts receivable - Others	72.899	4.774
Accounts receivable (UNJSPF)	0	1.371
TOTAL ASSETS	8.412.376	6.414.617
Liabilities		
Contributions received in advance	1.186.339	1.158.344
Unliquidated obligations- current period	0	377.916
Obligations - current period	694.346	422.264
Unliquidated obligations- prior period	72.936	25.000
Fund account	8.784	8.613
Korea fund	3.408	9.778
Assessment	1.830.074	1.329.482
TOTAL LIABILITIES	3.795.887	3.331.397
Working Capital Fund Reserve	850.000	450.000
Prior period Gains- Reserve	2.633.220	1.109.244
Net gain of income over expenditure (after provision for the Working Capital Fund Reserve)	1.333.269	1.523.976
Total working capital fund and excess of income over expenditures	4.816.489	3.083.220
TOTAL LIABILITIES, RESERVES AND FUND BALANCES	8.412.376	6.414.617

NOTES TO THE FINANCIAL STATEMENT FOR THE PERIOD 1 JANUARY UNTIL 31 DECEMBER 2001

Note 1: Statement of the objectives and activities of the Tribunal

1 The International Tribunal for the Law of the Sea (ITLOS) is an independent international judicial body established in 1996 under the United Nations Convention on the Law of the Sea for the settlement of disputes relating to the uses and resources of the sea. Such disputes may arise between the States Parties to the Convention and other entities expressly provided for in the Convention. In addition jurisdiction may be conferred to the Tribunal by mutual agreement of the parties to a case. The Tribunal is composed of 21 independent members of recognized competence in the law of the sea representing the principle legal systems of the world to provide a global forum for law of the sea disputes.

Note 2: Summary of significant accounting policies

2. The Fourth Meeting of the States Parties to the United Nations Convention of the Law of the Sea decided that until regulations governing the management of the Tribunal's financial resources have been approved by the States Parties, the Financial Regulations of the United Nations will apply *mutatis mutandis*. The Tribunal's accounts are therefore currently maintained in accordance with the Financial Regulations and Rules of the United Nations with such modifications as required by the nature and scope of work of the Tribunal.

3. The form of presentation of the accounts, comprising two statements and one Annex for the Financial Period ending 31 December 2001, is in line with the formats proposed for use by the agencies of the United Nations system.

Accounting Period

4. The current accounting period being reported on is from 1 January to 3 December 2001.

Currency of accounts

5 The accounting unit is the United States Dollar. The United Nations operational rates of exchange form the basis for establishing the equivalent in United States Dollars of other currencies.

Translation of currencies

6. Differences between the valuation of the currencies when entered into the accounts and when actual transactions are completed are calculated and detailed in these notes as gains and losses on exchange transactions.

7 Periodically, assets and liabilities in currencies other than United States Dollars are revalued for accounting purposes at the prevailing United Nations operational rates of exchange. Any variance due to fluctuation of those rates is accounted for as income or loss in the statement of income and expenditure.

Income

8. Income consists of assessed contributions from the States Parties. All other income received by the Tribunal is classified as miscellaneous income and is included as general resources. See note 4.

Expenditure

9. All expenditure of the Tribunal is recorded against allocated lines of budgetary appropriation.

10. Expenditures of the Tribunal are accounted for on an accrual basis, except for those relating to staff entitlements, which are accounted for on the basis of cash disbursements. No provision is made for staff entitlements due to repatriation, accumulated annual leave and compensatory time liability. Reference is made to Note 3: Contingent liability.

Assets

11. All funds received are deposited into Tribunal's bank accounts, including those under special account arrangements (see paragraph 21), and reflected as cash holdings. Non-expendable equipment (especially computer hardware and software) is not included in the assets but is charged against the current appropriations when acquired.

Liabilities

12. The liabilities of the Tribunal include contributions received in advance, special accounts and un-liquidated obligations.

The statement of assets and liabilities includes a special account (United Nations Joint Staff Pension Funds – UNJSPF) maintained for withholdings from staff and contributions of the Tribunal to United Nations Joint Staff Pension Fund. The amount equals the contributions of staff and the organization's share that would have been payable to the UNJSPF for the period prior to the General Service Staffs' eligibility to participate in the UNJSPF (before 1 January 1997).

A special account (Assessment special account) has also been maintained for staff assessment withholdings from the gross remuneration of staff in accordance with the applicable scale of the United Nations.

Reserves

Reserves include funds credited to the Working Capital Fund in the full amount authorised by the Meeting of States Parties as follows:

1999	Savings	USD	200.000
2000	Appropriations	USD	50.000
2000	Savings	USD	200.000
2001	Appropriations	USD	50.000
2001	Savings	USD	150.000
		USD	650.000

Note 3: Contingent liability

The net contingent liability for staff benefits as at 31 December 2001 is established at USD 257,636.86 consisting of the following:

Accumulated leave	USD	127.293,23
Compensatory time	USD	835,95
Repatriation grant	USD	129.507,68
	USD	257.636,86

17 There is no provision in the accounts for contingent liability. The expenditures will be charged against the budget appropriations of the periods when actual payments are made. In accordance with the Staff Regulation and Rules of the Tribunal the contingent liability reflected above is based on net remuneration and does not include staff assessment. This liability might be subject to German social security payments (medical insurance, pension and long term care) for German staff.

Note 4: Income

The Tribunal's income in the financial period 2001 totalled USD 8,455,939 income resulted from contributions of 137 States Parties totalling USD 8,090,900. In addition, income included savings due to the cancellation for prior period obligations in the amount of USD 186,213, net interest income of USD 146,693 and gains due to fluctuation in exchange rates amount to USD 32,133. Of the total income from contributions of the State Parties, at the end of that Financial Period an amount of USD 1,314,164 was outstanding from States Parties.

Note 5: Expenditures

19. The Tribunal's expenditures for the Financial Period 2001 totalled USD 6,972,670. There were an over-expenditure in the budget line Judges Pension due to the demise of a Member of the Tribunal. This was offset against savings under the compatible budget line Annual Allowances. There was also an over-expenditure in the budget line Maintenance of the Premises totalling USD 20,974 due to inadequate

estimates regarding the first year of operation in the new premises. The amount has been offset against savings under compatible budget line Security (contractual services). These two budget lines have subsequently been amalgamated in the 2002 Budget.

Note 6: Assets

20. Contributions receivable total USD 1,314,164 as at 31 December 2001.

21. As at 31 December 2001, cash totalled USD 6,849,011. Included in this amount is a special account for Pension withholdings and employer's contribution of USD 8,785 and a special account for Staff assessment withholdings of USD 1,113,887. USD 716,187 have been transferred from other bank accounts to the special bank account for staff assessment in 2002. These are not expendable resources of the Tribunal. The policy for dealing with the Staff Assessment account is scheduled to be discussed at the Twelfth Meeting of the States Parties to be held from 16 to 26 April 2002 in New York.

22. The aggregate of accounts receivable, advances and deposits as at 31 December 2001 totalled USD 8,412,376.

Note 7: German Social Security Payments

23. Since the finalization of the Headquarters Agreement is still pending, the Tribunal has continued in 2001 to reimburse those German or German resident staff members ensured under the statutory social insurance system for the employer's share (50%) to the pension, medical and long term care components of the scheme. No reimbursement was made for unemployment insurance. In addition, the staff members had to contribute to the United Nations Joint Staff Pension Fund to which the Tribunal is a participant. On basis of the German government's confirmation that the United Nations Staff Pension Fund provides for adequate benefits this practice has been discontinued with effect from 1 January 2002 with regard to pension scheme contributions. The staff members concerned applied for the return of all payments into the German pension scheme since 1 July 1997. Upon receipt of the amount by the staff members concerned, the Tribunal will specify the modalities

under which the staff members will reimburse the employer's share to the Tribunal during the course of 2002.

24. The total payments to cover social insurance contributions into the German statutory scheme during the financial period 1 January to 31 December 2001 amounted to USD 55,040. An estimated amount of USD 30,970 is for the pension contributions and is to be recovered in 2002. In addition a sum of approximately USD 154,247 is likely to be recovered for the financial Periods 1996/97, 1998, 1999 and 2000. The amount to be recovered will be adjusted by the interest that would have accrued on the contributions made by the staff member.

Note 8:

25. The audited Financial Statements of 1998, 1999 and 2000 showed a net gain of income over-expenditure in the amount of USD 2,633,220. Under the United Nations Financial Regulations, which the Tribunal applies mutatis mutandis, this amount should be surrendered by the adjusting the States Parties Assessment of Contributions for the following Financial Periods. In view of the outstanding contributions and the need to build up the Working Capital Fund to an operational level and as noted in the 1999 and 2000 Financial Statements the surrender has previously been deferred. The total amount to be surrendered with regard to the 1996/97 to 2000 financial periods has been placed in 2001 in a separate account. The matter will be placed before the Twelfth Meeting of States Parties. Unless the Meeting of States Parties decides otherwise, the Tribunal intends to surrender the savings indicated above in compliance with the Financial Regulations. In that case a deduction of the amount of such savings would be made from the assessed contributions of States Parties for 2003.

FINANCIAL REPORT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2001

Introduction

1 The Registrar of the Tribunal for the Law of the Sea submits herewith the Financial Report for the Financial Period ended 31 December 2001. It should also be noted that this is the fifth Financial Period and the fifth Financial Report of the International Tribunal for the Law of the Sea (ITLOS).

2. The Financial Report includes the Statement of Income and Expenditures (Exhibit 1) and the Statement of Assets and Liabilities (Exhibit 2), the Notes to the Financial Statements (Exhibit 3) and the Expenditure Report (Exhibit 5), for the financial period ended 31 December 2001. Of these, Statements I and II are presented in line with the formats agreed for the harmonization of the accounts of agencies and organisations in the United Nations common system, and to facilitate review by States Parties to the Convention on the Law of the Sea. The Financial report provides the financial results of ITLOS activities in 2001. Highlights are summarized in the following paragraphs:

Income

3. ITLOS income in the Financial Period 2001 totalled assessed contributions of USD 8,090,900. Income resulted from contributions of 137 States Parties at the end of 2001. Of the total income from contributions an amount of USD 1,314,164 was outstanding from States Parties as at 31 December 2001. In addition to the above there was interest income in the amount of USD 146,693.

Expenditure

4. ITLOS expenditure (before provision for the working capital fund) for the Financial Period 2001 was USD 6,972,670. There were certain savings due to recruitment delay factors, non-utilisation of the Contingency and optimizing resources.

Special accounts

5 A special account was maintained for the Pension Fund withholdings of the Staff members and of the Organization's share of pension contributions for the period prior to the General Services Staff's eligibility to participate in the United Nations Joint Staff Pension Fund. In addition, a special account was maintained for staff assessment withholdings.

Working Capital Fund

6. The Tenth Meeting of States Parties (SPLOS/56, paragraph 3) provided an amount of USD 50,000 for advances to the Working Capital Fund and on an exceptional basis provided that savings, if any, from the 2001 appropriations of up to a maximum of USD 200,000 be credited to the Working Capital Fund. Since the previous budgets of the Tribunal allocated USD 400,000 from savings in previous financial years and an appropriated amount of USD 50,000 in the Financial year 2000, only USD 150,000 from savings was necessary to augment the Fund to the recommended level of USD 650,000.

Institutional arrangements

7 A network version of the Sun computerised Accounting was implemented and staff were trained in its applications during the course of the year. The system will be effective from 1 January 2002. The Tribunal also installed an electronic banking system which is operational.

(Signed) Philippe Gautier
Registrar

DRAFT EXPENDITURE REPORT 2001

(in US Dollars)

	Objects of expenditure	Approved Budget 2001	Disbursements (as at 31/03/2002)	Unliquidated Obligations (as at 31/03/2002)	Total	Balance	Total Exp./ Appr. Budget %	
1	RECURRENT EXPENDITURE							1
2	Remuneration of Judges							2
3	Annual allowances	1,295,100	1,212,843	0	1,212,843	82,257	93.65	3
4	Special allowances	329,500	294,774	0	294,774	34,726	89.46	4
5	Travel of Judges to meetings	120,000	113,607	0	113,607	6,393	94.67	5
6	Judges' Pension Scheme	15,400	35,259	0	35,259	-19,859	228.95	6
7	Established posts	2,523,900	2,033,145	0	2,033,145	490,755	80.56	7
8	Common staff costs	841,300	750,283	0	750,283	91,017	89.18	8
9	General temporary assistance	120,000	115,318	4,197	119,515	485	99.60	9
10	Overtime	50,300	21,948	679	22,627	27,673	44.98	10
11	Representation allowance	7,600	6,772	0	6,772	828	89.11	11
12	Official travel	94,700	58,441	483	58,924	35,776	62.22	12
13	Communications	146,000	75,972	4,494	80,466	65,534	55.11	13
14	Supplies and materials	85,000	35,447	7,863	43,310	41,690	50.95	14
15	External printing and binding	64,600	5,849	53,302	59,151	5,449	91.57	15
16	Temporary assistance for meetings	129,100	80,825	0	80,825	48,275	62.61	16
17	Maintenance of premises	525,000	496,030	49,944	545,974	-20,974	104.00	17
18	Security (contractual services)	150,000	118,902	0	118,902	31,098	79.27	18
19	Rental & maintenance of equipment	207,000	148,715	48,831	197,546	9,454	95.43	19
20	Hospitality	7,100	5,468	1,397	6,865	235	96.69	20
21	Special services (external audit)	15,400	0	13,100	13,100	2,300	85.06	21
22	Library - procurement of books and publications	60,000	52,151	7,622	59,773	227	99.62	22
23	Start-up costs of library	60,000	50,448	9,391	59,839	161	99.73	23
24	Misc. services & charges (incl. bank charges)	25,000	21,018	0	21,018	3,982	84.07	24
25	Training	30,000	21,792	3,156	24,948	5,052	83.16	25
26								26
27	NON-RECURRENT EXPENDITURE							27
28								28
29	Furniture and equipment							29
30	1. Purchase of equipment	248,000	191,150	20,210	211,360	36,640	85.23	30
31	2. Purchase of special equipment	27,000	16,916	3,729	20,645	6,355	76.46	31
32								32
33	CONTINGENCY FUND	863,900	730,508	681	731,199	132,701	84.64	33
34								34
35	WORKING CAPITAL FUND	50,000	50,000	0	50,000	0	100.00	35
	TOTAL	8,090,900	6,743,581	229,089	6,972,670	1,118,230	86.18	

Savings tranferred to Working Captial Fund 150,000

Audit Procedures and Results of the Additional Audit Scope

As directed by the President of the International Tribunal for the Law of the Sea and set out in his letter dated March 14, 2002, we have audited the following aspects of operational procedures in addition to our audit of the financial statements as of 31 December 2001:

1 whether expenditures incurred have been appropriately authorized by the party designated for that purpose in the Rule of the Tribunal and the Financial Regulations of the United Nations;

2. whether staff and persons being paid by the Tribunal have been recruited or engaged in the manner provided in the Rules of the Tribunal or the Financial Regulations of the United Nations;

3. whether goods and services have been procured in accordance with the procedures provided for in the Financial Regulations of the United Nations; and

4. whether goods and services which have been procured are necessary or not excessive, having regard to circumstances and the functions of the Tribunal.

As part of our audit of the financial statements the following additional procedures have been performed by us:

a) Authorization of expenditures

As instructed, we have reviewed the procedures for the authorization of expenditures as outlined in the Financial Regulations of the United Nations, and tested on a sample basis if these procedures have been strictly followed by the Tribunal in all material respects.

As a result of the work done, no significant matter came to our attention. In our opinion the procedures for the authorization of expenditures were carried out in accordance with the Financial Regulations of the United Nations.

b) Procedures for recruiting/engaging staff

We have reviewed if the procedures for recruiting/engaging staff are in line with the Staff Regulations of the International Tribunal and United Nations staff rules and selected for testing the recruitment procedures for two new employees engaged in 2001.

As a result of the work done, no significant matters arose. In our opinion we believe that the Tribunal has carried out the procedures for recruiting staff in accordance with the Rules of the Tribunal and the Financial Regulations and staff rules of the United Nations.

c) Procedures for procurement of goods and services

We reviewed if the procedures followed by the Tribunal in the order process were in line with the Financial Regulations of the United Nations (i.e. include request of bids or tenders, fair analysis of tenders, written contracts etc.) and tested on a sample basis, that these procedures have been considered in all material respects by the Tribunal.

As a result of the work done, no significant matters came to our attention. In our opinion the procedures for procurement of goods and services were carried out in accordance with the Financial Regulations of the United Nations.

d) Examined whether goods and services procured are necessary or not excessive, having regard to circumstances and the functions of the Tribunal

As part of our audit we have examined, (1) if the expenditures reported for the fiscal year have been properly included in the Statement of income and expenditures and have been charged to the appropriate budget line, (2) if the goods and services procured were necessary or not excessive with regard to circumstances and the functions of the Tribunal.

As a result of our work we noted certain minor over-expenditures within the budget lines Judges Pension Scheme and Maintenance for the Premises. The over expenditures were not excessive high, could be reasonably explained by the Tribunal and were compensated by savings under compatible budget lines. The equipment acquired is duly listed in the inventory and is being used as required by the circumstances and the functions of the Tribunal.

[Translator's notes are in square brackets]

General Engagement Terms

for

Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften

[German Public Auditors and Public Audit Firms]

as of January 1, 2002

This is an English translation of the German text, which is the sole authoritative version

1. Scope

(1) These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.

(2) If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No. 9 below also apply to such third parties.

2. Scope and performance of the engagement

(1) Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services – not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäßiger Berufsausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.

(2) The application of foreign law requires – except for financial attestation engagements – an express written agreement.

(3) The engagement does not extend – to the extent it is not directed thereto – to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; the same applies to the determination as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.

(4) If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

3. The client's duty to inform

(1) The client must ensure that the Wirtschaftsprüfer – even without his special request – is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.

(2) Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations – especially quantity and cost computations – prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

7. Transmission of the Wirtschaftsprüfer's professional statement

(1) The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to transmit to a certain third party does not result from the engagement terms.

The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.

(2) The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

8. Correction of deficiencies

(1) Where there are deficiencies, the client is entitled to subsequent fulfillment [of the contract]. The client may demand a reduction in fees or the cancellation of the contract only for the failure to subsequently fulfil [the contract]; if the engagement was awarded by a person carrying on a commercial business as part of that commercial business, a government-owned legal person under public law or a special government-owned fund under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure to subsequently fulfil [the contract]. No. 9 applies to the extent that claims for damages exist beyond this.

(2) The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first paragraph not arising from an intentional tort cease to be enforceable one year after the commencement of the statutory time limit for enforcement.

(3) Obvious deficiencies, such as typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) may be corrected – and also be applicable versus third parties – by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw – also versus third parties – such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

9. Liability

(1) The liability limitation of § ["Article"] 323 (2)["paragraph 2"] HGB ["Handelspesetzbuch": German Commercial Code] applies to statutory audits required by law.

(2) Liability for negligence; An individual case of damages

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) no. 2 WPO ["Wirtschaftsprüferordnung": Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims of compensatory damages of any kind – except for damages resulting from injury to life, body or health – for an individual case of damages resulting from negligence is limited to € 4 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(3) Preclusive deadlines

A compensatory damages claim may only be lodged within a preclusive deadline of one year of the rightful claimant having become aware of the damage and of the event giving rise to the claim – at the very latest, however, within 5 years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence. The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

10. Supplementary provisions for audit engagements

(1) A subsequent amendment or abridgement of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.

(2) If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprüfer's request.

(3) The client has a right to 5 copies of the long-form report. Additional copies will be charged for separately.

11. Supplementary provisions for assistance with tax matters

(1) When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client – especially numerical disclosures – are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.

(2) The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records – especially tax assessments – material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.

(3) In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:

a) preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client

b) examination of tax assessments in relation to the taxes mentioned in (a)

c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)

d) participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)

e) participation in Einspruchs- und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the afore-mentioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

(4) If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements the work mentioned under paragraph 3 (d) and (e) will be charged separately.

(5) Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:

a) the treatment of nonrecurring tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax

b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and

c) the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

(6) To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisites nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

12. Confidentiality towards third parties and data security

(1) Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.

(2) The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.

(3) The Wirtschaftsprüfer is entitled – within the purposes stipulated by the client – to process personal data entrusted to him or allow them to be processed by third parties.

13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtschaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

14. Remuneration

(1) In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays; sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.

(2) Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

15. Retention and return of supporting documentation and records

(1) The Wirtschaftsprüfer retains, for seven years, the supporting documents and records in connection with the completion of the engagement – that had been provided to him and that he has prepared himself – as well as the correspondence with respect to the engagement.

(2) After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.

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Special Conditions

Governing the Raising of the Limit of Liability defined
in the General Terms of Engagement for
Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften
as amended January 1, 2001

Instead of the lower liability limit for single cases defined in section 9 (2) of the enclosed General Terms of Engagement a uniform limit of Euro 10 million shall apply.

Where the Client is of the opinion that the engagement involves a risk significantly in excess of Euro 10 million, we are prepared to raise the limit on our liability to a reasonable amount in exchange for an adequate increase in our fees, provided that insurance cover can be obtained.

The above shall not apply where a higher or lower limit on liability for professional services is prescribed by law, e.g. for a statutory audit.

Where a loss is due to several causes, we shall be liable only if our negligence or the negligence of our staff has contributed to the loss, and only for the proportion of the loss corresponding to the extent of such contribution, subject to the agreed limit on our liability; this provision shall apply in particular to all engagements to be performed jointly with other members of the profession.

In addition to section 7 (1) of the General Terms of Engagement we point out that a limitation of our liability agreed with our client will also apply to any third party who is affected by the engagement.

Exclusive place of jurisdiction for any action or other legal proceedings arising out of or in connection with this engagement shall be the court competent for the office in charge for this engagement.